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In the Supreme Court of the United States

OCTOBER TERM, 1975

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 525 F.2d 1184. The opinion of the district court (Pet. App. B) is reported at 363 F. Supp. 644.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1975. On January 26, 1976, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to March 8, 1976, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The railroad Hours of Service Act limits the number of consecutive hours a railroad employee may be on duty without being off duty for specified periods. It further provides that interim periods available for rest "at other than a designated terminal" are treated as

time on duty. The question presented is whether, as the court of appeals held, "designated terminals" are those designated in collective bargaining agreements rather than, as petitioner contends, those it has unilaterally designated.

STATEMENT

The United States instituted this action in the United States District Court for the Northern District of California to recover statutory penalties from petitioner for violations of the railroad Hours of Service Act, 45 U.S.C. 61 *et seq.*[1] Following the filing of cross-motions for summary judgment on stipulated facts, the district court dismissed the suit (Pet. App. B). The court of appeals reversed, one judge dissenting (Pet. App. A).

At the time this litigation was instituted, 45 U.S.C. 62(a)(1) made it unlawful for any railroad to require or permit an employee to remain on duty for more than fourteen hours (the present limit is twelve hours) until the employee had been off-duty for at least ten consecutive hours. 45 U.S.C. 61(b)(3) provides that in computing the number of hours an employee has been on duty, any period of four hours or more available for rest at a "designated terminal" shall be excluded:

> Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:
>
> (A) Interim periods available for rest at other than a designated terminal;

[1]Each instance in which a railroad permits an employee to remain on duty in excess of the statutory maximum number of hours constitutes a separate violation and subjects the employer to a penalty of $500. 45 U.S.C. 64a(a). Thus, the United States sought to recover $2,000 in this litigation.

> (B) Interim periods available for less than four hours rest at a designated terminal; * * * .

The statute does not define the term "designated terminal." The sole question is whether a particular interim stop was a "designated terminal" for the crew of one freight train.

As set forth by the court of appeals (Pet. App. A-1 to A-3), the stipulated facts were that at 4:30 a.m. on February 14, 1971, the four-man crew of petitioner's train reported for duty at its "home terminal" in Richmond, California. Each member of the crew had been off-duty for at least ten hours prior to going to work. The train left Richmond destined for Riverbank, California, the crew's "away-from-home terminal."

At approximately 8:50 a.m., the train arrived at the Mormon Yard, Stockton, California, where it stopped to permit the interchange of cars with connecting carriers. At 9:05 a.m., the entire crew of the train was released for rest at Stockton, where suitable facilities for food and lodging were available. The release period lasted five hours and thirty-five minutes, until the crew was recalled at 2:40 p.m. The crew then boarded the same train and continued on to its "away-from-home" terminal at Riverbank.

After a brief stop-over there, the crew left Riverbank to return to Richmond aboard another train. Following their arrival in Richmond, the members of the crew were relieved from duty between 8:20 p.m. and 8:25 p.m. Including the rest period at Stockton, approximately sixteen hours had elapsed from the time they reported for duty in the morning until their release that evening.

Each of the crew members was represented by one of two labor unions that had entered into collective bar-

gaining agreements with petitioner. Under those agreements, the "home terminal" for the crew of this train was Richmond, California, and its "away-from-home terminal" was Riverbank, California (Pet. App. A-3). While Stockton, California, was not designated as a "terminal" for this or any other crew operating between Richmond and Riverbank, it was a "home-terminal" for a few local and yard crew assignments made by petitioner. In addition, Stockton is "an historical release point" for crews on the Richmond to Riverbank run, but was not specifically so designated in any collective bargaining agreement or formal management notice (*ibid.*).

The district court ruled that since the Stockton interchange point had long been considered a "terminal" by the railroad industry and since it provided ample food and lodging facilities, it constituted a "designated terminal" under Section 61(b)(3) (Pet. App. B-6). Excluding the crew's five hours and thirty-five minutes of released time at Stockton from the computation of its service, it held that petitioner had not violated Section 62(a)(1) (Pet. App. B-2, B-6).

The court of appeals (one judge dissenting) reversed on the ground that Section 61(b)(3) referred to the particular terminals designated for each individual crew and run in the collective bargaining agreements between the railroad and the unions. Since Stockton was neither the contractually designated "home" nor the "away-from-home" terminal for this particular crew, the court concluded that the release period in Stockton was part of the time on duty under Section 61(b)(3)(A) (Pet. App. A-9 to A-11). Therefore, it held that petitioner had violated the Hours of Service Act (Pet. App. A-14).

ARGUMENT

This case presents a narrow question of statutory interpretation under the railroad Hours of Service Act.

The statute provides that the time an employee spends while resting at a "designated terminal" is not time on duty in determining the maximum number of hours that an employee may be on duty without an off-duty period.[2] The issue is whether "designated terminal" refers only to terminals designated as rest places in collective bargaining agreements, as the court of appeals held, rather than, as petitioner contends, any terminal possessing adequate food and lodging facilities that it unilaterally designates as a resting point. There is no conflict among the courts of appeals—indeed the ruling is one of first impression—and the decision is correct. There is accordingly no occasion for further review.

The statutory language and plan support the holding of the court of appeals that "designated terminal" refers to one jointly designated in the collective bargaining agreements rather than one unilaterally designated by the carrier. The unions, no less than the carriers, have a strong interest in the designation of the particular places to be used for off-duty rest in applying the statutory limitation upon the total consecutive hours an employee may work. Congress thus understandingly decided to make the application of this term reflect its commonly recognized meaning in the railroad industry, as defined in the industry's collective bargaining agreements. As the Senate Committee Report on the bill stated (S. Rep. No. 604, 91st Cong., 1st Sess. 8 (1969)):

> The phrase "designated terminals" in section 1(b)(3)(A) and (B) is intended to have that meaning commonly recognized in the railroad industry. The

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[2] The phrase "designated terminal" was first introduced by the 1969 Amendments to the Hours of Service Act, which updated certain safety provisions first enacted in 1907. Act of December 26, 1969, 83 Stat. 463.

> committee is advised that collective bargaining agreements provide a commonly understood definition for this term. As a minimum the committee intends that the term should mean generally a place where suitable food and lodging are available for employees.

This congressional decision reflected the view of the railroad industry itself. R. R. Manion, then Vice-President in the Operations and Maintenance Department of the Association of American Railroads and the chief spokesman for the railroad industry in opposing the legislation, testified before the Senate Committee that the term "designated terminal," while not defined in the proposed legislation, "has significance in relation to the provisions of collective bargaining agreements and refers to terminals that are 'designated' in such agreements." Hearings on Freight Car Supply before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess. 122-123 (1969).

As the court of appeals pointed out (Pet. App. A-7), the district court noted that

> the terminals which collective bargaining agreements commonly designate are the "home terminal" and the "away-from-home terminal" for each crew assignment. Sometimes the terminals so designated are indeed labelled as "designated" terminals. * * * Indeed, the pertinent collective bargaining agreements of the Santa Fe use these terms in this way.

The court of appeals thus properly concluded (Pet. App. A-12 to A-13):

> Accordingly, we think that Congress could sensibly have concluded that rest periods best serve their function at a known location at the midpoint of a run where the crew has its established "away-from-home" terminal or at the end of a run where the crew has its established "home" terminal.

* * * * *

> We think that the safety hazards would be mitigated by requiring that stops which toll the running of time on duty be made only at the crew's contractually established, i.e., "designated," "home" or "away-from-home" terminals. There the crewmen will presumably be in familiar surroundings and can establish regular accommodations for rest. Moreover, rest stops will presumably be spaced more evenly and effectively to break up monotonous long runs.

Indeed, the railroad industry sought to change the bill to achieve directly the objective petitioner now seeks to accomplish by judicial interpretation. The industry proposed to substitute for "designated terminal" the words "place where reasonable facilities for food and rest are available to employees." Hearings on Freight Car Supply, *supra*, at 127-128, 153. This is substantially the same standard as petitioner's contention (Pet. 13) that "designated terminal" means "a release point for a train crew and which affords the crew adequate facilities for food and lodging." The refusal of Congress to adopt the railroad's proposal is, as the court of appeals noted (Pet. App. A-10), a further indication that it did not intend the Act to have the meaning petitioner now ascribes to it.[3] See *United States* v. *Seaboard Air Line R. Co.*, 361 U.S. 78, 82-83.

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[3]The last sentence in the passage from the Senate Committee Report quoted above (pp. 5-6)—that "[a]s a minimum" the term "designated terminal" "should mean generally a place where suitable food and lodging are available for employees" (S. Rep. No. 604, *supra*, at 8)—does not indicate that Congress accepted the railroad industry's view. That statement merely reflects the congressional intention that only those terminals designated in the collective bargaining agreements that meet this standard would qualify under the Act as a resting place that would constitute off-duty time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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